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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

ROBERT COHEN, individually and on behalf of all others similarly situated,

**Plaintiff,**

VS.

SPROUTS FARMERS MARKET, INC.,  
and DOES 1 through 10, inclusive, and  
each of them.

### Defendants.

CASE NO.: 8:22-cv-01837 DOC (DFMx)

Honorable David O. Carter  
Courtroom 10 A

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
DEFENDANT SPROUTS FARMERS  
MARKET, INC.'S MOTION TO  
DISMISS PLAINTIFF'S FIRST  
AMENDED COMPLAINT**

[Filed concurrently with Notice of Motion  
and Motion, Declaration of Brandon  
Lombardi, and [Proposed] Order]

Date: January 9, 2023

Time: 8:30 a.m.

**Place:** Courtroom 10A

**411 W. 4th Street  
Santa Ana, CA 92701**

Complaint Filed: September 6, 2022  
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Trial Date: None Set

## 1 TABLE OF CONTENTS

	PAGE
I. INTRODUCTION .....	1
II. FACTUAL AND PROCEDURAL BACKGROUND .....	2
A. Overview of FACTA and Plaintiff's Allegations .....	2
B. Procedural History and Defendant's Domicile. ....	4
III. LEGAL STANDARD .....	5
IV. ARGUMENT.....	5
A. The Conduct Alleged in the Complaint – Printing The First Six And Last Four Digits of a Card Number– Does Not Violate FACTA.....	5
B. The Complaint Fails to State a Claim For <i>Willful</i> FACTA Violations.....	7
C. The Court Lacks Personal Jurisdiction To Decide The Non-Resident, Putative Class Members' FACTA Claims. ....	10
V. CONCLUSION .....	11

**TABLE OF AUTHORITIES**

	Page(s)
<b>Cases</b>	
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	5
<i>Bateman v. Am. Multi-Cinema, Inc.</i> , 623 F.3d 708 (9th Cir. 2010) .....	2, 8
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	5
<i>Benny v. Pipes</i> , 799 F.2d 489 (9th Cir. 1986) .....	10
<i>Bristol-Myers Squibb Co. v. Superior Court</i> , 137 S. Ct. 1773 (2017).....	11
<i>Broderick v. 119TCbay, LLC</i> , 670 F. Supp. 2d 612 (W.D. Mich. 2009).....	6
<i>Coleman v. Exxon Mobil Corp.</i> , No. 1:17-CV-119-SNLJ, 2018 U.S. Dist. LEXIS 62831 (E.D. Mo. Apr. 13, 2018) .....	6
<i>Daimler AG v. Bauman</i> , 134 S. Ct. 746 (2014).....	10
<i>Ford Motor Co. v. Mont. Eighth Judicial Dist. Court</i> , 141 S. Ct. 1017 (2021).....	10
<i>Fullwood v. Wolfgang's Steakhouse, Inc.</i> , No. 13 Civ. 7174 (KPF), 2015 U.S. Dist. LEXIS 96903 (S.D.N.Y. July 23, 2015) .....	8, 9
<i>Goodyear Dunlop Tires Ops., S.A. v. Brown</i> , 564 U.S. 915 (2011).....	10, 11
<i>HomeAway.com v. City of Santa Monica</i> , 918 F.3d 676 (9th Cir. 2018) .....	5

1	<i>Jackson v. Hayakawa</i> , 682 F.2d 1344 (9th Cir. 1982) .....	10
2	<i>Katz v. Donna Karan Co., L.L.C.</i> , 872 F.3d 114 (2d Cir. 2017) .....	6
3		
4	<i>Moser v. Benefytt, Inc.</i> , 8 F.4th 872 (9th Cir. 2021) .....	10
5		
6	<i>Noble v. Nevada Checker Cab Corp.</i> , 726 F. App'x 582 (9th Cir. 2018).....	6
7		
8	<i>Owino v. Corecivic, Inc.</i> , 36 F.4th 839 (9th Cir. 2022) .....	10, 11
9		
10	<i>In re Packaged Seafood Prods. Litig.</i> , 338 F. Supp. 3d 1118 (S.D. Cal. 2018) .....	10
11		
12	<i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797 (1985).....	11
13		
14	<i>Safeco Ins. Co. of Am. v. Burr</i> , 551 U.S. 47 (2007).....	8
15		
16	<i>Seo v. CC CJV Am. Holdings, Inc.</i> , No. CV 11-05031 DDP, 2011 U.S. Dist. LEXIS 120246 (C.D. Cal. Oct. 18, 2011) .....	8, 9
17		
18	<i>Taylor v. Fred's, Inc.</i> , 285 F. Supp. 3d 1247 (N.D. Ala. 2018) .....	7
19		
20	<i>In re Toys "R" Us</i> , No. MDL 08-01980 MMM, 2010 U.S. Dist. LEXIS 133583 (C.D. Cal. Aug. 17, 2010) .....	7
21		
22	<b>Statutes</b>	
23	15 U.S.C. section 1681n .....	7
24		
25	28 U.S.C. section 1331 .....	4
26	Credit and Debit Card Receipt Clarification Act of 2007, Pub. L. No. 110- 241, 122 Stat. 1565 .....	1, 2
27		
28		

1 Fair and Accurate Credit Transactions Act,  
2 15 U.S.C. § 1681c(g)(1) ..... 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11

3 Fair Credit Reporting Act ..... 2

4 Pub. L. 108-159, 117 Stat. 1952 (2003) ..... 2

5 **Other Authorities**

6 Federal Rule of Civil Procedure 12(b)(2) ..... 2, 5, 10, 11, 12

7 Federal Rule of Civil Procedure 12(b)(6) ..... 1, 2, 5, 7, 8, 9, 11

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

In the early 2000s, the federal government enacted the Fair and Accurate Credit Transactions Act, 15 U.S.C. § 1681c(g)(1) (“FACTA”), which sought to combat identity theft by imposing fines for the intentional disclosure of certain consumer information on printed debit and credit card receipts. In this putative class action, Plaintiff Robert Cohen (“Plaintiff”) contends that Defendant Sprouts Farmers Market, Inc. (“Defendant” or “Sprouts”) improperly allowed more information to be printed on his receipts—and the receipts of unnamed individuals who shopped at any number of Sprouts stores across the United States—than FACTA permits. Though Plaintiff amended in response to Defendant’s motion to dismiss the original complaint by dropping his negligence claim, the First Amended Complaint continues to suffer from all of the same other deficiencies.

Plaintiff’s single claim for willful FACTA violations does not satisfy Federal Rule of Civil Procedure 12(b)(6)’s basic pleading standards. First, Plaintiff overlooks case law holding that the conduct alleged here—printing the first six and last four digits of a credit or debit card number on a receipt—does not violate FACTA. Plaintiff further disregards the Credit and Debit Card Receipt Clarification Act of 2007 (“Clarification Act”), Pub. L. No. 110-241, 122 Stat. 1565, which Congress enacted in response to an influx of FACTA lawsuits like this one seeking possibly millions in damages for “technical” FACTA violations. The Clarification Act confirmed that FACTA was meant to protect against actual harm resulting from the disclosure of consumer credit information, which information is neither included in nor discernable from merely the first six and last four digits of a card number on a printed receipt.

Even assuming *arguendo* that the inclusion of merely the first six and last four digits of a card number was sufficient to establish a FACTA violation, and it is not, Plaintiff alleges no facts to support a *willful* violation. Rather, the First Amended Complaint conjectures that because FACTA was enacted over a decade ago, all businesses are uniformly aware of its requirements and necessarily act “knowingly” or “recklessly” if a

1 FACTA violation ever occurs. Plaintiff makes a logical leap, unsupported by any facts,  
 2 and concludes that Defendant must have acted *willfully* with regard to Plaintiff's receipts.  
 3 A claim for a willful statutory violation based solely on speculation and platitudes cannot  
 4 satisfy Rule 12(b)(6)'s basic pleading standards.

5 Finally, Defendant requests the Court dismiss the claims for willful FACTA  
 6 violations that Plaintiff asserts on behalf of non-California, unnamed class members  
 7 pursuant to Rule 12(b)(2) for lack of personal jurisdiction. The Court lacks personal  
 8 jurisdiction to decide these class members' claims based on alleged FACTA violations  
 9 occurring entirely outside of California, where, as here, Defendant is neither organized in  
 10 nor maintains its principal place of business in California.

## 11 **II. FACTUAL AND PROCEDURAL BACKGROUND**

### 12 **A. Overview of FACTA and Plaintiff's Allegations**

13 The First Amended Complaint centers on alleged violations of FACTA, 15 U.S.C.  
 14 § 1681c(g)(1). In 2003, the federal government enacted FACTA, which amended the Fair  
 15 Credit Reporting Act (the "FCRA"), "[i]n an effort to combat identity theft." *Bateman v.*  
 16 *Am. Multi-Cinema, Inc.*, 623 F.3d 708, 717 (9th Cir. 2010) (citing Pub. L. 108-159, 117  
 17 Stat. 1952, 1959-60 (2003)). FACTA aims to prevent identity theft by requiring that:

18 Except as otherwise provided in this subsection, no person that  
 19 accepts credit cards or debit cards for the transaction of business  
 20 [] print more than the last 5 digits of the card number or the  
 21 expiration date upon any receipt provided to the cardholder at  
 the point of the sale or transaction.

22 15 U.S.C. § 1681c(g)(1).

23 A few years later, Congress clarified that "[t]he purpose of this Act [FACTA] is to  
 24 ensure that consumers suffering from any actual harm to their credit or identity are  
 25 protected while simultaneously limiting abusive lawsuits that do not protect consumers but  
 26 only result in increased cost to business and potentially increased prices to consumers."  
 27 See Credit and Debit Card Receipt Clarification Act of 2007, Pub. L. No. 110-241, 122  
 28 Stat. 1565 at §2(b).

1       The First Amended Complaint asserts one claim for “knowing” violations of  
 2 FACTA. (FAC, ¶¶36-40.) Plaintiff’s story is this: “[o]n or around August 3, 2022,”  
 3 Plaintiff went to a Sprouts store in the City of Orange, California “multiple times” and  
 4 purchased items with his credit card or debit card. (FAC, ¶9.) Plaintiff contends that  
 5 “Defendant printed an electronically-generated registered receipt which displayed” his  
 6 “six initial and last four credit card and debit card numbers in direct violation of FACTA.”  
 7 (FAC, ¶10.) Plaintiff also claims to have made “other purchases” at unspecified Sprouts  
 8 stores “within the last year,” and that he did not always take his paper receipt. (FAC, ¶15.)  
 9 This supposedly “result[ed] in his printed receipt with his extra credit or debit card  
 10 numbers being able to be stolen within his knowledge.” (FAC, ¶15.)

11      According to Plaintiff, by printing the first six and last four digits of credit or debit  
 12 card numbers on receipts, Defendant displayed irresponsible disregard for Plaintiff’s and  
 13 similarly situated consumers’ credit information. (FAC, ¶13.) On information and belief,  
 14 Plaintiff contends that “Defendant and/or agent [sic] of Defendant[’s] handled many of  
 15 these receipts and were aware that these receipts included the extra numbers of its  
 16 customers[’] credit and/or debit cards.” (FAC, ¶14.) Also on information and belief,  
 17 Plaintiff concludes that “Defendant and/or agents of Defendant” knew or “should have  
 18 known that they were engaging in the systematic illegal practice” of printing such receipts  
 19 in violation of FACTA. (FAC, ¶21.)

20      As to how Defendant or its agents “knew [or] should have known that they were  
 21 engaging in” this “systematic illegal practice,” Plaintiff speculates that “knowledge of the  
 22 act has become more and more common place with many people posting popular online  
 23 articles about the act.” (FAC, ¶19.) Plaintiff tosses in that “approximately twelve (12)  
 24 years” have passed since FACTA’s enactment, and those in the (nebulous) “industry of  
 25 engaging in consumer transactions have to incorporate the costs of legal liability into their  
 26 overhead in order to obtain reasonable profits and margins.” (FAC, ¶¶ 16-17.) This gives  
 27 “those in the industry” a “strong incentive to obtain some understanding of the laws  
 28 governing these consumer transactions, such as the FACTA.” (FAC, ¶17.) Plaintiff

1 accuses Defendant of supposedly shirking FACTA's requirements to avoid "costs  
 2 associated with compliance," which could include "buying new cash registers, and/or  
 3 paying an expert to come change the program that prints receipts." (FAC, ¶22.) Plaintiff  
 4 then concludes that Defendant "*willfully engaged in the systematic illegal practice*" alluded  
 5 to. (FAC, ¶¶23-24) (emphasis added).

6 Beyond speculating about what Defendant may have known about FACTA and  
 7 generalizing about what an industry at large has learned over the last decade, no allegations  
 8 even hint that Defendant was aware that any of its point of sale systems may have printed  
 9 supposedly non-compliant receipts.

10 Based on those barebones allegations, Plaintiff brings this action on his behalf and  
 11 on behalf of all others similarly situated, proposing to represent a class of:

12 All persons within the United States to whom Defendants  
 13 provided an electronically printed receipt at the point of sale or  
 14 transaction, in a transaction occurring nationwide within two  
 15 years of filing the complaint, and wherein the receipt displayed  
 16 (a) more than the last five digits of the person's credit card or  
 debit card number.  
 17

This proposed class apparently includes members who reside outside of California  
 and/or received non-compliant receipts from debit or credit card purchases at Sprouts  
 stores outside of California. (FAC, ¶¶25-26.).

## 20      **B. Procedural History and Defendant's Domicile**

21 Plaintiff filed a complaint against Defendant in the Orange County Superior Court  
 22 on September 6, 2022. (Dkt. No. 1, Exs. 1-2). Defendant timely removed the action to  
 23 this Court on October 7, 2022 on grounds of federal question jurisdiction under 28 U.S.C.  
 24 section 1331 (Dkt. Nos. 1-3.). Defendant filed its first motion to dismiss Plaintiff's original  
 25 complaint on November 10, 2022. (Dkt. Nos. 4, 12.) In response, Plaintiff filed a First  
 26 Amended Complaint on November 14, 2022. (Dkt. No. 13.) As set forth below, although  
 27 Plaintiff has dropped his negligence claim, Plaintiff's amended complaint suffers from all  
 28 of the same deficiencies. Defendant is organized under the laws of the State of Delaware

1 with its principal place of business in the State of Arizona. *See* Declaration of Brandon  
2 Lombardi (“Sprouts Decl.”), ¶¶3-4.

3 **III. LEGAL STANDARD**

4 A complaint may be dismissed under Federal Rule of Civil Procedure 12(b)(6),  
5 where, as here, it does not allege “enough facts to state a claim to relief that is plausible on  
6 its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial  
7 plausibility when the plaintiff pleads factual content allows the court to draw the  
8 reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*  
9 *Iqbal*, 556 U.S. 662, 678 (2009).

10 However, “a complaint [does not] suffice if it tenders naked assertions devoid of  
11 further factual enhancement.” *Id.* (quotation marks and brackets omitted). “Threadbare  
12 recitals of the elements of a cause of action, supported by mere conclusory statements, do  
13 not suffice.” *Id.* Nor is the Court “bound to accept as true a legal conclusion couched as  
14 a factual allegation” when ruling on a motion to dismiss. *Id.*; *HomeAway.com v. City of*  
15 *Santa Monica*, 918 F.3d 676, 683 n.3 (9th Cir. 2018).

16 Plaintiff’s conclusory and boilerplate allegations fail to plead facts sufficient to state  
17 any claims for relief, and the First Amended Complaint should accordingly be dismissed  
18 in its entirety. In addition to which, the First Amended Complaint is also subject to  
19 dismissal, pursuant to Federal Rule of Civil Procedure 12(b)(2), for lack of personal  
20 jurisdiction with respect to the non-California putative class members’ claims.

21 **IV. ARGUMENT**

22 **A. The Conduct Alleged – Printing The First Six And Last Four Digits of a  
23 Card Number– Does Not Violate FACTA.**

24 At the outset, the First Amended Complaint fails to satisfy Rule 12(b)(6) because  
25 the allegations, on their face, do not support a violation of FACTA. FACTA prohibits  
26 printing “more than the last 5 digits of the card number or the expiration upon any receipt  
27 provided to the cardholder at the point of the sale or transaction.” 15 U.S.C. § 1681c(g)(1).  
28 As to the permitted number of digits, courts have recognized that “the critical direct object

1 of the sentence—the part of the sentence that answers the question of what ‘no person . . .  
2 shall print . . .’—is unclear.” *Broderick v. 119TCbay, LLC*, 670 F. Supp. 2d 612, 617  
3 (W.D. Mich. 2009). Nonetheless, federal courts have interpreted FACTA as a prohibition  
4 on printing the last five digits of a card number *and* expiration date but *not* other, non-  
5 personally identifying information about the transaction. *Id.* Reading FACTA so  
6 stringently would lead to an “absurd” result that would “prohibit printing the very  
7 information necessary to make the receipt useful, including a description of the item  
8 purchased.” *Id.* This practical interpretation is supported by the fact that businesses  
9 routinely include other types of information on receipts without raising any question of  
10 FACTA compliance. *Id.* at 614-15 (clarifying, for example, that “merchants may lawfully  
11 print in word form the brand name [of the card] on credit card receipts”).

12 The Ninth Circuit has similarly interpreted FACTA to protect only personally-  
13 identifying information, rejecting a FACTA claim premised on the inclusion of the last  
14 five digits *and the first* digit of a card number on a receipt, as the first digit provided no  
15 further personally-identifying information about the consumer. *See Noble v. Nevada*  
16 *Checker Cab Corp.*, 726 F. App’x 582, 584 (9th Cir. 2018) (“[T]he first digit of a credit  
17 card number merely identifies the brand of the card, and Congress has not prohibited  
18 printing the identity of the credit card issuer along with the last five digits of the credit card  
19 number.”).

20 Other federal courts have agreed that printing the first *six* digits is insufficient to  
21 support a FACTA violation because they merely identify the issuing bank. *See Katz v.*  
22 *Donna Karan Co., L.L.C.*, 872 F.3d 114, 120 (2d Cir. 2017) (“As both the court below and  
23 other district courts have found, the first six digits of a credit card number constitute the  
24 IIN for the card’s issuer, digits which can be easily obtained for any given issuer, including  
25 from the website discussed above.”); *Coleman v. Exxon Mobil Corp.*, No. 1:17-CV-119-  
26 SNLJ, 2018 U.S. Dist. LEXIS 62831, at \*10 (E.D. Mo. Apr. 13, 2018) (“[T]he first six  
27 digits of plaintiff’s sixteen-digit credit card number do not convey any personal  
28 information about him. Instead, as plaintiff concedes, the first six digits identify only the

1 bank that issued the card, and Congress does not prohibit printing the card issuer in word  
2 form on the receipt. In fact, each issuer's six-digit code is publicly available on the  
3 internet."); *Taylor v. Fred's, Inc.*, 285 F. Supp. 3d 1247, 1262 (N.D. Ala. 2018)  
4 ("[B]ecause printing the name of the particular card issuer is not prohibited by FACTA,  
5 the inclusion of the digits representing that same information cannot be material to the  
6 harm of identity theft (which FACTA seeks to prevent)."); *In re Toys "R" Us*, No. MDL  
7 08-01980 MMM (FMOx), 2010 U.S. Dist. LEXIS 133583, at \*53 (C.D. Cal. Aug. 17,  
8 2010) ("[B]ecause Congress did not prohibit the printing of issuer information on the credit  
9 card receipt, there is no possibility that the printing of the first six digits could have resulted  
10 in a risk of harm greater than that prohibited by Congress.").

11 Based on the foregoing, the conduct alleged in the First Amended Complaint—  
12 printing the first six digits and last four digits of a debit or credit card number on a receipt—  
13 does not disclose any more personally-identifying information about a consumer than what  
14 Congress has permitted to be printed on receipts. Even taking Plaintiff's allegations as  
15 true, the facts alleged fail to state any violation of FACTA. Plaintiff's allegations thus fail  
16 to state a violation of the statute relied upon by the First Amended Complaint. The First  
17 Amended Complaint, including the single cause of action included therein, is accordingly  
18 subject to dismissal with prejudice pursuant to Rule 12(b)(6).

19 **B. The First Amended Complaint Fails to State a Claim For *Willful*  
20 FACTA Violations.**

21 Under 15 U.S.C. section 1681n, any person who *willfully* fails to comply with the  
22 requirements of FACTA may be found liable for actual damages, statutory damages, or  
23 punitive damages. Yet the First Amended Complaint contains no factual allegations, even  
24 accepting all the current allegations as true, to support any claim that Defendant *willfully*  
25 violated FACTA, if Defendant violated FACTA at all. Instead, the First Amended  
26 Complaint concludes that "Plaintiff is informed, believes, and thereupon alleges[,] that  
27 Defendant and/or agents of Defendant *willfully* engaged in the systematic illegal practice  
28

1 described above.” (FAC, ¶24) (emphasis added). This deduction is not enough to satisfy  
2 Rule 12(b)(6).

3 The Ninth Circuit has made clear that to state a claim for a willful violation of a  
4 statute, the plaintiff must allege more than a “technical” violation. *Bateman*, 623 F.3d at  
5 714 n.4. To be willful, *i.e.*, “knowing” or “reckless,” “the defendant must have taken  
6 action involving ‘an unjustifiably high risk of harm that is either known or so obvious that  
7 it should be known.’” *Id.* at 711 n.1 (*quoting Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47,  
8 68 (2007)). In the context of a willful violation of FACTA, “it is not enough to show  
9 simply that there was awareness — either general or specific — of FACTA’s requirements  
10 and a failure to take the steps necessary to ensure compliance with those requirements.”  
11 *Fullwood v. Wolfgang’s Steakhouse, Inc.*, No. 13 Civ. 7174 (KPF), 2015 U.S. Dist. LEXIS  
12 96903, at \*10 (S.D.N.Y. July 23, 2015).

13 In *Seo v. CC CJV Am. Holdings, Inc.*, No. CV 11-05031 DDP (MRWx), 2011 U.S.  
14 Dist. LEXIS 120246, at \*3-6 (C.D. Cal. Oct. 18, 2011), plaintiff asserted claims for willful  
15 and negligent FACTA violations against defendant. Like the court in *Fullwood*, this Court  
16 in *Seo* similarly held that defendant’s alleged membership in an organization that regularly  
17 sends legal updates, including about the FACTA requirements, was insufficient to  
18 establish that defendant knowingly ignored FACTA. *Id.* Rather, these cases confirm “[a]  
19 more precise formulation would be that a defendant willfully violates FACTA when it  
20 knows itself to be in violation of FACTA, or acts in a manner that entails an unjustifiably  
21 high risk of violating FACTA that is so obvious that it should be known.” *Fullwood*, 2015  
22 U.S. Dist. LEXIS 96903, at \*10. These facts are absent from the First Amended  
23 Complaint, which relies entirely on speculation as to Defendant’s intent.

24 In fact, *Fullwood* sheds further light on how Plaintiff falls short of alleging any  
25 willfulness on Defendant’s part, even if there was a FACTA violation. Unlike in Plaintiff’s  
26 First Amended Complaint, the complaint in *Fullwood* did include some factual allegations  
27 suggesting that the defendants were “specifically and repeatedly informed of FACTA’s  
28 existence, applicability, and potential imposition of liability.” 2015 U.S. Dist. LEXIS

1 96903, at \*11 (emphasis added). For instance, the *Fullwood* plaintiff alleged that the  
2 defendants had negotiated contractual provisions regarding FACTA and received  
3 “regular” statements, including from their bank and point of sale providers, referencing  
4 FACTA compliance. *Id.* at \*12. Those pointed factual allegations in *Fullwood* were  
5 enough for that complaint to survive a motion to dismiss. *Id.* at \*12-13. In contrast,  
6 Plaintiff alleges no such factual allegations with regard to any conduct by Defendant that  
7 could rise to the same level of “willfulness.” (*See generally*, FAC).

8 Rather, the best Plaintiff can do is repeat that FACTA has been in place for  
9 “approximately twelve (12) years,” speculate that “knowledge of the act has become more  
10 and more common place with many people posting online articles about the act,” and  
11 deduce that “the act has assimilated itself within the industry with the majority of  
12 businesses complying with the statute.” (FAC, ¶¶16-20.) Plaintiff leaves the reader  
13 guessing as to which “industry” he is referring or which “businesses” he perceives as  
14 complying with FACTA in ways Defendant does not. (*See* FAC, ¶¶16-20.) Based on  
15 these generalizations, Plaintiff assumes that Defendant “knew and should have known that  
16 [it] was engaging in the systematic illegal practice described” elsewhere in the First  
17 Amended Complaint, which he contends rises to the level of “willfulness.” (FAC, ¶¶16-  
18 21.) This is not enough.

19 Even assuming that Plaintiff alleged that information regarding FACTA was  
20 available to Defendant—though Plaintiff stops short of doing so—this Court has already  
21 held, in a case asserting similar claims for willful violations of FACTA, that “[t]he fact  
22 that information about FACTA was available to [defendant] does nothing to support  
23 [plaintiff’s] naked assertion that [defendant] was notified of FACTA’s provisions and  
24 knowingly ignored them.” *See Seo*, 2011 U.S. Dist. LEXIS 120246, at \*5.

25 The First Amended Complaint accordingly fails to plead sufficient facts to state a  
26 plausible claim that Defendant “willfully” violated FACTA under Rule 12(b)(6), and is  
27 therefore subject to dismissal.

28

1           **C. The Court Lacks Personal Jurisdiction To Decide The Non-Resident,**  
2           **Putative Class Members' FACTA Claims.**

3           Finally, Defendant seeks dismissal of the non-California, putative class members'  
4           FACTA claims for lack of personal jurisdiction under Federal Rule of Civil Procedure  
5           12(b)(2).<sup>1</sup> There are two types of personal jurisdiction: general, or "all-purpose,"  
6           jurisdiction and specific, or "case-linked," jurisdiction. *Ford Motor Co. v. Mont. Eighth*  
7           *Judicial Dist. Court*, 141 S. Ct. 1017, 1024 (2021).

8           A business entity is subject to general jurisdiction in the states where it is  
9           incorporated and/or has its principal place of business. *Goodyear Dunlop Tires Ops., S.A.*  
10          *v. Brown*, 564 U.S. 915, 924 (2011); *In re Packaged Seafood Prods. Litig.*, 338 F. Supp.  
11          3d 1118, 1139 n. 14 (S.D. Cal. 2018) (finding a limited liability corporation subject to the  
12          general jurisdiction of the states encompassing its principal place of business and where it  
13          was incorporated). Sprouts is incorporated in Delaware, and its principal place of business  
14          is in Arizona. (Sprouts Decl., ¶¶3-4). Since neither provides an avenue to California,  
15          Plaintiff must establish that this is the "exceptional case" where Sprouts' contacts with  
16          California are so "substantial" or "systematic" that it should be expected to defend itself  
17          in California for any dispute. *Daimler AG v. Bauman*, 134 S. Ct. 746, 762 n.20 (2014).

18          All Plaintiff alleges is that Sprouts "does business within the State" and that "the  
19          incident" giving rise to Plaintiff's claims "took place" in California. (FAC, ¶3.) The U.S.  
20          Supreme Court has already held that boilerplate allegations akin to "defendant operates in  
21          California, among other states," do not make an "exceptional case" that subjects the  
22          defendant to California's general jurisdiction. See *Daimler AG*, 134 S. Ct. at 761, 762,

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23          <sup>1</sup> While recent Ninth Circuit decisions counsel that a motion to dismiss unnamed, non-  
24          resident class members for lack of personal jurisdiction may appropriately be made after  
25          class certification, see, e.g., *Owino v. Corecivic, Inc.*, 36 F.4th 839, 847 (9th Cir. 2022);  
26          *Moser v. Benefytt, Inc.*, 8 F.4th 872, 877 (9th Cir. 2021), it is also well-settled that a defect  
27          in personal jurisdiction can be waived if not raised in the first responsive pleading. See,  
28          e.g., *Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir. 1986); *Jackson v. Hayakawa*, 682 F.2d  
1344, 1347 (9th Cir. 1982) (same). Defendant is hereby expressly reserving its personal  
jurisdiction defense in the event that the Court finds that this challenge is premature.

1 n.20 (declining to approve the exercise of general jurisdiction in every State in which a  
2 corporation engaged in substantial and continuous business). Since California has no  
3 general jurisdiction over Sprouts, Plaintiff's only recourse to keep the non-California,  
4 unnamed class members' claims before this Court is to establish that there is specific  
5 jurisdiction over those class members' FACTA claims.

6 Specific jurisdiction "is confined to adjudication of issues deriving from, or  
7 connected with, the very controversy that establishes jurisdiction." *Goodyear*, 564 U.S. at  
8 919. The Court cannot exercise specific jurisdiction over the non-California class  
9 members' claims for willful violations of FACTA because Defendant's alleged conduct as  
10 to those class members—printing "more than the last five digits of the person's credit card  
11 or debit card number"—took place outside of California. (FAC, ¶¶25-26 (alluding to  
12 "transaction[s] occurring nationwide").) *See Bristol-Myers Squibb Co. v. Superior Court*,  
13 137 S. Ct. 1773, 1781 (2017) (reversing California Supreme Court's finding of specific  
14 jurisdiction over the claims by nonresident plaintiffs whose alleged injuries took place out  
15 of state in a mass tort action because "traditional notions of fair play and substantial  
16 justice" require an "affiliation between the forum and the underlying controversy");  
17 *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 805 (1985) (requiring "jurisdiction over  
18 every plaintiff whose claim it seeks to adjudicate, sufficient to support a defense of res  
19 judicata in a later suit for damages by class members").

20 Whether determined now or later, the non-California class members' FACTA  
21 claims are subject to dismissal for lack of personal jurisdiction. *See Owino*, 36 F. 4th at  
22 847 (holding that a "Rule 12(b)(2) personal jurisdiction defense to the claims of unnamed  
23 putative class members" may be raised after a class is certified).

24 **V. CONCLUSION**

25 For the foregoing reasons, Defendant respectfully requests the Court dismiss  
26 Plaintiff's First Amended Complaint in its entirety pursuant to Rule 12(b)(6) with  
27 prejudice. In addition, Defendant respectfully requests the Court also dismiss the claims  
28 asserted on behalf of non-California, unnamed class members for lack of personal

1 jurisdiction under Rule 12(b)(2), and reserves its right to seek dismissal on that basis if the  
2 Court finds this request is premature.

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4 DATED: November 28, 2022

DORSEY & WHITNEY LLP

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**CERTIFICATE OF SERVICE**

*Robert Cohen v. Sprouts Farmers Market, Inc.,  
United States District Court for the Central District of California  
Case No.: 8:22-cv-01837 DOC (DFMx)*

I hereby certify on November 28, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Central District of California by using the CM/ECF System.

Participants in the case who are registered CM/ECF Users will be automatically served by the CM/ECF System.

DATED: November 28, 2022

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